IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1941

No.

LINA H. HALVERSON, BENEFICIARY,
Petitioner,

vs.

THE UNITED STATES OF AMERICA
Respondent.

BRIEF IN SUPPORT OF PETITION.

I.

OPINIONS OF COURTS BELOW.

The findings of fact, conclusions of law, and judgment of the United States District Court are set out in the record at pages 79, 80, 81 and 82, and the proposed findings of fact and conclusions of law submitted by petitioner are contained on pages 75, 76, 77, and 78, neither of which are reported. The opinion of the United States Circuit Court of Appeals for the Seventh Circuit is found in the record at pages 96, 97, 98, 99, 100, and 101, and is reported in 121 F. (2d) 420.

II.

JURISDICTION.

The jurisdiction of this Court is invoked to review the cause by writ of certiorari under Section 240 of the Judicial Code, U. S. C. Title 28, Section 347, providing for the granting of a writ of certiorari by this Court to review a final judgment or decree of the United States Circuit Court of Appeals.

III.

STATEMENT OF THE CASE.

A statement of the case is set out in the foregoing petition under the caption "Summary Statement of the Matters Involved", and "The Facts", to which reference is here made.

IV.

SPECIFICATION OF ERRORS.

1. The Circuit Court of Appeals erred in holding that the United States Government was not estopped from contesting the policy on the grounds of fraud.
2. The Circuit Court of Appeals erred in holding that notice of certain facts to the Compensation, Disability, Hospitalization and Pension Division of the Veterans Administration was not notice to the Insurance Division of the same office.
3. The Circuit Court of Appeals erred in holding that insured consulted and was treated by physicians within the meaning of the policy of insurance.

V.

ARGUMENT.

A.

The knowledge acquired by the Administrator through his officers and employees in the Hospitalization, Disability and Pension Division concerning insured's health constituted knowledge to him in the Insurance Division of his office.

The Circuit Court of Appeals held that the acceptance of premiums by the Administrator did not estop the Government from asserting the defense of fraud to a suit on the policy of insurance (R. 99). The opinion reasoned that although the Compensation Division of the Veterans Administration knew many years before insured's death that he was not in good health at the time of his reinstatement, that fact may not be used to estop the Insurance Division from canceling the policy (R. 100).

At the outset we desire to point out that the Insurance Division never canceled insured's policy of insurance. It merely refused to pay when death occurred (R. 74, 75).

The knowledge that the Administrator acquired of insured's death was shown by official reports and letters of the Administrator's officers and employees originating from treatment at the Veterans Administration Hospital at Hines, Illinois, and from applications to the Compensation and Pension Divisions of the office of the Administrator (R. 53, 63, 69, 74). The Circuit Court of Appeals held that because the Administrator separated his office into Compensation and Insurance Divisions, that facts within the knowledge of the Compensation Division could not be attributed to the Insurance Division (R. 96, 100).

The Act creating the office of Administrator of Veterans provides that

> "All official acts performed by such officers or employees specifically designated therefor by the Administrator shall have the same force and effect as though performed by the Administrator in person" (U.S.C. Title 38, Section 426).

Section 430 of the same Act, (U.S.C., Title 38 Section 430), provides for the creation of a central office in Washington, D. C. and regional offices throughout the United States and its possessions, and provides further that such regional offices should have the same powers and authority as the central office, subject to review by the Administrator.

Consequently, the knowledge that the officers and agents of the Administrator acquired in their official capacity as well as the documentary information on file in the Administrator's own office, should be held to be knowledge of the Administrator. (*Ritter* v. *United States*, (C.C.A. 3rd) 28 F. (2d) 265-267; 65 Corpus Juris, 1277; *Jones* v. *United States* (C.C.A. 5th) 106 F. (2d) 888, 890; *United States* v. *Patryas*, (C.C.A. 7th) 90 F. (2d) 715, 717, Affirmed in 303 U. S. 341, 82 L. ed. 883, 58 S. Ct. 551.)

Obviously there must be some separation of the duties of the Administrator's office for the orderly transaction of business but in this respect the government is no different than private insurance companies, whose mammoth size also requires just as strict a separation of its business into departments and inner departments. However, it is held that notice of facts which come to the attention of any one department, however minor, constitutes notice to the company. (2 Couch on Insurance, Sections 525a-d, pages 525, 526 and cases therein cited.) (*Stipcich* v. *Metropolitan Life Insurance Co.*, 277 U. S. 311, 72 L. Ed. 895, 48 S. Ct. 512.) We feel that in the present case

that there is an even more urgent reason for the application of this rule because despite the so-called separation of the business of the Compensation and Insurance Divisions, still in the application that insured filed with the Compensation Division for assistance he was asked if he carried war risk insurance. Insured answered that he did (R. 53, 54). This was filed on February 6, 1933, and there is no sufficient reason advanced why this question should be asked by the Compensation Division if there was no connection with the Insurance Division.

There is the further fact in the present case that the Insurance Division itself also had knowledge of the facts constituting the alleged fraud as the record shows that on May 13, 1937, insured filed an application with the Insurance Division claiming insurance benefits for total permanent disability (R. 57). In the application he declared that he had discussed his condition with physicians prior to the date he applied for insurance (R. 57). Thus even the Insurance Division had notice of all the facts prior to insured's death.

The Circuit Court of Appeals summarily disposed of this feature by stating that "The application for insurance benefits was not made out until a short time before Halverson's death, and the date of its receipt by the Insurance Division is not shown" (R. 100).

It is true that the application was made only fifteen days before insured died and the record shows that it was dated and acknowledged at the Veterans Administration as of that date, and the original application received in evidence as Defendant's Exhibit 9 bears the stamp of the Veterans Administration as of May 13, 1937 (R. 57). This should be sufficient identification of the date it was received at the Veterans Administration but if further proof is required this Court has the right under Rule 75 (h) and

(i) of Rules of Civil Procedure to require the original document to be sent up for examination.

We, therefore, respectfully submit that coupled with the other information in the Veterans Administration the notice to the Insurance Division of the Veterans Administration fifteen days before insured's death constituted sufficient and reasonable notice to the Administrator. (U.S.C. Title 38 Sec. 426.) (*United States* v. *Patryas* (C.C.A. 7th) 90 F. (2d) 715, 717; *Ritter* v. *United States,* (C.C.A. 3rd) 28 F. (2d) 265, 267; *Jones* v. *United States* (C.C.A. 5th), 106 F. (2d) 888, 890.)

B.

The Government is bound by the same rules of estoppel in war risk insurance contracts as private insurance companies.

The Act creating the office of Veterans Administration provides for the allowance of pensions, compensation allowances, gratuities, hospitalization, education, and many other benefits. (U.S.C. Title 38, Section 434, *et seq.*) It also provides for the issuance of war risk insurance contracts, the form of which is almost identical to that customarily used by private insurance companies. (U.S.C. Title 38, Section 512(a).) These policies of insurance it has been held by this Court are valid contracts of the United States and carry with them the legal obligations and incidents of the same dignity as other contracts of the United States. The beneficiaries enjoy the same rights and benefits as beneficiaries under policies of insurance issued by private corporations. (*Lynch* v. *United States,* 292 U. S. 571, 78 L. ed. 1434, 54 S. Ct. 850.)

Consequently, the Government of the United States should be bound by the same rules as those governing private corporations, and it should not be permitted to perpetrate upon its policy holders wrongs which it would

not tolerate if practiced by a private insurance company. (*Cooke* v. *United States,* 91 U. S. 389, 23 L. Ed. 237; *United States* v. *Chandler,* 152 F. 25, 41 (C.C.A. 6th) 29; *Lynch* v. *United States,* 292 U. S. 570, 580, 78 L. Ed. 1434, 1441, 54 S. Ct. 840, 21 C. J. 1186, 65 C. J. 1276; *United States* v. *Walker,* D. C. 139 F. 409, affirmed C.C.A. 148 F. 1022; *United States* v. *Stewart,* 311 U. S. 60, 78 L. Ed. 25, 32.)

C.

The Government is estopped from asserting that deceased insured was guilty of fraud in procuring the reinstatement of his insurance policy.

Insured died on May 28, 1937 (R. 20). The policy had been in effect over six years, during which time the Government collected nearly $800.00 in monthly premiums (R. 168). The Administrator neither returned nor offered to return any part of these premiums (R. 75). The payment for the month of June 1937 amounted to $20.90 which petitioner paid during May 1937, was also retained (R. 75). After insured's death petitioner wrote the Administrator stating that her husband died during May and requested the return of this unearned premium (R. 75). The Administrator replied that he would look into the matter but she heard nothing from him (R. 75).

The retention of the June 1937 premium alone, we think, is sufficient to estop the defendant from contesting the validity of the policy. The Administrator certainly knew after insured's death whether he intended to honor insured's contract and consequently, was thus obliged to either return the premium or acknowledge liability under the policy. (*Phoenix Mutual Life Ins. Co.* v. *Raddin,* 120 U. S. 183, 7 Sup. Ct. 500, 30 L. Ed. 644.) The record discloses that the Administrator first became apprised of insured's health on December 10, 1932, and he still collected premiums on this policy of insurance for nearly

five years thereafter. This is sufficient to work an estoppel, as the law will not permit the insurer to treat the policy in effect only for the purpose of paying premiums and then to later refuse to bear its burden. (*New York Life Ins. Co.* v. *Eggleston*, 96 U. S. 572, 24 L. Ed. 841; *Phoenix Mutual Life Ins. Co.* v. *Raddin*, 120 U. S. 183, 7 S. Ct. 500, 30 L. Ed. 644; *Knights of Pythias* v. *Kalinski*, 163 U. S. 289, 298; *Schimp* v. *Cedar Rapids Insurance Co.*, 124 Ill. 354.)

D.

Insured neither consulted nor was treated by physicians within the meaning of the policy of insurance.

In the application for the insurance policy herein sued on deceased insured was asked if he ever had been treated for any disease of the kidney or bladder and he answered "No" (R. 50). He was then asked the following question "Have you been ill, or contracted any disease, or suffered any injury or been prevented by reason of ill health from attending your usual occupation, or consulted a physician in regard to your health, since the date of discharge? Answer yes or no." Insured answered this series of questions "No" (R. 50).

The trial court found that deceased insured was treated for disease of the kidney or bladder and also consulted physicians in regard to his health since date of discharge (R. 80, 81).

The Circuit Court of Appeals agreed stating that insured discussed his condition more or less casually with the family physician twice and was afterwards examined by another doctor to ascertain what was troubling him. This the court held was more than a mere routine examination and although the result of the examination was reassuring it did not excuse him from disclosing it in his application (R. 96, 99).

The evidence offered by the government in support of its affirmative defense as revealed by the records of the Veterans Administration showed that in 1920 insured talked with the family physician who was attending insured's wife at the time of the birth of their baby and is supposed to have complained of backache and frequent urination since service in France (R. 65). Ten years later in 1930 insured again talked with this same physician when he was attending insured's wife for ptomaine poisoning and is reported to have told the Doctor of blood in his urine. The Doctor stated he did not diagnose insured's condition "because it really was not a consultation, just a casual visit to his wife" (R. 65, 28). The third and last alleged consultation or treatment occurred September 22nd, 1930, when a Dr. Broman made a cystoscopic examination of the bladder and found a small wart like growth and told insured to return and he would cauterize it, meaning he would burn it out (R. 33, 66). The fact that Dr. Broman said it was a wart and could be burned out anytime made insured treat the matter lightly and he never returned (R. 66).

It is perfectly obvious that insured was not *treated* by either physician. (See Couch on Insurance, Sec. 889, pages 3018-20); *Jeffress* v. *New York Life Insurance Co.* (C.C.A. 4th) 74 F. (2d) 874. Whether he consulted one is of course another matter. The two informal chats insured had with his family physician ten years apart can hardly be said to be a consultation because he did not retain the Doctor but merely visited with him while he was attending his wife (R. 65, 28). Surely this is not a consultation within the meaning of the policy. (*Mutual Life Insurance Co. of New York* v. *Dobler,* (C.C.A. 9th) 137 F. 550; *Combs* v. *Equitable Life Insurance Compay* (C.C.A. 4th) 120 F. (2d) 432, 436. That he was examined in 1930 by Dr. Broman is admitted but we respectfully submit that this one isolated visit to a doctor merely for an examination,

the result of which he took very lightly, should not be held to be an examination within the meaning of the policy of insurance. (*Atlantic Insurance Co.* v. *Stringer,* (C.C.A.) 28 F. (2d) 665, 666.)

CONCLUSION.

It is believed that the foregoing discussion and citation of authorities demonstrates that the decision of the Court below is erroneous. It is earnestly urged in the interest of all world war veterans who are constantly paying premiums for insurance that the right of the Administrator of Veterans Affairs to use certain facts in his own files in order to defeat recovery on policies of insurance but to deny knowledge of these same facts for all other purposes be fully and completely determined. It is, therefore, respectfully submitted in the light of the reasons indicated, that the petition should be granted.

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